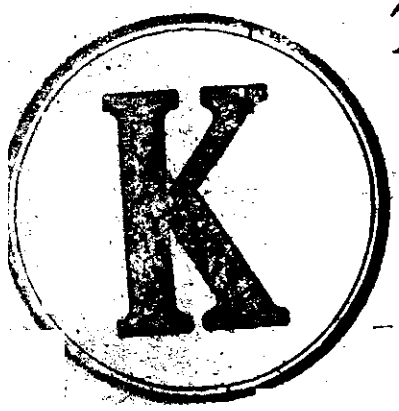

1953

File No. O/(Bom)L.R.C. 53
G-71/53.

P5E

Legal Department.

G **BRANCH**

Subject:—

Opinion on the Bombay

Land Revenue Code.

File No. O/(Bom.)L.R.C./53.

Gen. 194 8.

G-71/53

CONTENTS.

O.Mem. L.R.C./536 (8-71)

Legal Department File No.....

Sr.No.	M.I./O.No.	Subject	Pages.
		Opinions under the Bombay Land Revenue Code.	
1.)	O.No. G-288/14-5-53.	Re: Recovery of Govt. dues as arrears of Land revenue whether the acquittal of the accused in criminal court will debar Govt. from recovering the dues as arrears of land revenue.	1-4.
2.)	O.No. G- 345/12-6-53.	Whether the property can be attached under the Land Revenue Code before holding a sale.	5-12.

lr
9/8

L-D-R-I-No-C. 295
dt. 20-3-53

Shri A.I.Mamadule rice-miller of Borli-Mundla who was prosecuted for misappropriation of Govt. paddy to the extent of about 60 bhandis under sec. 409 I.P.C. has been acquitted by the R.M.F.C., Pen.

In the judgment dated 6-10-52 of the R.M.F.C Karjat has stated among other things;-

Dishonesty is a pre-requisite for an offance under section 409 I.P.C. I must say that the prosecution has miserably failed to prove the necessary elements constituting the offence. It is an admitted fact that the accused was an agent of Govt. for the purpose of milling paddy. But it is not satisfactorily proved that he was entrusted with all the paddy or gunnies alleged to have been misappropriated by him. It is not at all proved that the accused has committed criminal breach of trust. Dishonesty has also not have proved. The accused takes a definite stand on the agreement and it is agreed by both the parties to recover the amount of shortage as an arrear of land revenue. The agreement on which prosecution are relying definitely lays down about civil liability, if at all, due from the accused, for the breach of its conditions, It seems that the prosecution want to thrash out this civil point in this criminal cause. This court is not meant to decide such civil liability cases. In the end

918
K.S.R.
918

Contd.

the accused was acquitted under section 253 Cr.Pro.Code.

Please see the opinion of the D.G.P. at p. 39 ante.

From the contents of the judgment it does not appear that any Revision application or appeal is feasibly against the decision of the R.M.F.C. Barjat.

"As per terms of the agreement the amount due to Govt. is recoverable as an arrear of land revenue and perhaps steps to recover the amount due from the miller may be taken up according to the procedure laid down few such recovery."

The Dy. D.G.S.(D). opines as under :-

Under clause (13) of the agreement slip A all amount due to Govt. under the agreement is recoverable as arrears of land revenue. The D.G.F. can therefore proceed for the recovery under the agreement. The acquittal of the accused in the Criminal Court will not bar the action. R.L.A. may please advise.

Md

6/8-

Office of the R.M.A.

Seen and returned.

The view teken by the Deputy D.C.S. is correct.

Sd/- J.R.Dhurandhar.
14/5.

o/c

Remembrancer of Legal Affairs.

U.R.to C.S.D. No. G- 285, dated the 14th May 1953.

MM

6/8-

Legal Department.

As there is no provision in the Land Revenue Code for making an attachment before holding a sale the only course open will be to bring the property of the surety in the hands of his heirs to sale. The amount recovered in the sale should be credited towards the debt due, and the mortgage decree which may be passed in the meanwhile may be executed only for recovering the balance still due.

Sd/-

o/c
Additional Secretary to Govt.

U.R.to C.S.D.,No. G-345, dated the 12th June 1953.

6/8-